

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ALLEN MARTIN GARAY,

Plaintiff,

Case No. 21-cv-65-pp

v.

COMMISSIONER OF THE
SOCIAL SECURITY ADMINISTRATION,

Defendant.

**ORDER GRANTING PLAINTIFF'S MOTION FOR LEAVE TO PROCEED
WITHOUT PREPAYING THE FILING FEE (DKT. NO. 3)**

The plaintiff has filed a complaint seeking judicial review of a final administrative decision denying his claim for disability insurance benefits under the Social Security Act. Dkt. No. 1. He also filed a motion for leave to proceed without prepaying the filing fee. Dkt. No. 3.

To allow the plaintiff to proceed without paying the filing fee, the court first must decide whether the plaintiff can pay the fee; if not, it must determine whether the lawsuit is frivolous. 28 U.S.C. §§1915(a) and 1915(e)(2)(B)(i).

Based on the facts in the plaintiff's affidavit, the court concludes that he does not have the ability to pay the filing fee. The plaintiff's request indicates that he is not employed, he is not married, and he has a 14-year-old son he is responsible for supporting. Dkt. No. 3 at 1. The plaintiff lists income of \$900 per month from a cleaning service that he apparently runs himself. *Id.* at 2. The plaintiff shows expenses of \$314 per month (\$100 rent, \$214 alimony or

child support), but he doesn't list expenses for food or utilities or the basic necessities of living, which he surely must have. Id. at 2-3. The plaintiff does not own a car or his home or any other property of value and he has \$2.00 in cash on hand or in a checking or savings account. Id. at 3-4. The plaintiff states, "My disabilities keep me from holding down any type of job and I have attempted may type of jobs but I cannot even keep up with simple, unskilled work tasks because of my inability to concentrate and make simple decisions as a result of the many chemotherapy treatments I have underwent over the years in an attempt to cure my brain cancer and prevent remission [sic]." Id. at 4. The plaintiff has demonstrated that he cannot pay the \$350 filing fee and \$52 administrative fee.

The next step is to determine whether the case is frivolous. A case is frivolous if there is no arguable basis for relief either in law or in fact. Denton v. Hernandez, 504 U.S. 25, 31 (1992) (quoting Nietzke v. Williams, 490 U.S. 319, 325 (1989); Casteel v. Pieschek, 3 F.3d 1050, 1056 (7th Cir. 1993)). A person may obtain district court review of a final decision of the Commissioner of Social Security. 42 U.S.C. §405(g). The district court must uphold the Commissioner's final decision as long as the Commissioner used the correct legal standards and the decision is supported by substantial evidence. See Roddy v. Astrue, 705 F.3d 631, 636 (7th Cir. 2013).

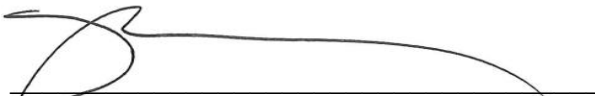
The plaintiff's complaint indicates that he was denied benefits and that he was disabled during the time period included in this case. Dkt. No. 1 at 3. The plaintiff believes that the unfavorable conclusions and findings of fact by

the Commissioner of Social Security when denying benefits are not supported by substantial evidence and/or are contrary to law and regulation because (1) the decision found moderate limitation in the plaintiff's concentration, persistence and pace but neither the decision nor the hypothetical provided corresponding limitations; (2) the credibility assessment was not based on substantial evidence and contained legal error; and (3) the decision failed to properly assess the residual effect of the plaintiff's cancer and post-treatment symptoms on his RFC. Id. At this early stage in the case, and based on the information in the plaintiff's complaint, the court concludes that there may be a basis in law or in fact for the plaintiff's appeal of the Commissioner's decision, and that the appeal may have merit, as defined by 28 U.S.C. §1915(e)(2)(B)(i).

The court **GRANTS** the plaintiff's motion for leave to proceed without prepaying the filing fee. Dkt. No. 3.

Dated in Milwaukee, Wisconsin this 19th day of January, 2021.

BY THE COURT:



HON. PAMELA PEPPER
Chief United States District Judge